Appendix B. Response to Comments on Ruby Pipeline Transportation Plan, Land Exchange, and Compatibility Determination

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Background

The U.S. Fish and Wildlife Service (Service), as the Federal land managing agency for the Sheldon National Wildlife Refuge (Sheldon Refuge), issued supplemental information in response to a request from Ruby Pipeline, LLC (Ruby) to use certain roads located within Sheldon Refuge. This supplemental information pertains to the National Environmental Policy Act (NEPA) process conducted for the Ruby Pipeline Project (Project). The *Ruby Pipeline Project Final Environmental Impact Statement* (Project FEIS) was released to the public in January 2010. On April 5, 2010, the Federal Energy Regulatory Commission (FERC) released its finding and ordered the issuance of a certificate for the proposed pipeline route. The Project FEIS included an assessment of impacts related to access roads to/from the proposed pipeline route. Some of those access roads are located on the Sheldon National Wildlife Refuge (Sheldon Refuge). The project proponent, Ruby Pipeline, LLC has worked closely with Sheldon Refuge to develop a transportation plan in requesting the use of certain roads within the Sheldon Refuge.

A preliminary version of *Ruby's Draft Transportation Plan for Use of Access Roads within Sheldon NWR* (Sheldon Transportation Plan) was provided in Appendix X (Transportation Plans) of the Project FEIS. Since release of the Project FEIS, Ruby and Sheldon Refuge continued to refine the Sheldon Transportation Plan.

One component of the Transportation Plan includes a proposed land exchange between Ruby and the Service, and is considered a connected action to the Sheldon Transportation Plan and Ruby Pipeline Project. A separate document, *Ruby Pipeline Project Land Exchange on Sheldon National Wildlife Refuge* (Land Exchange) includes a description of the lands being considered for exchange and an analysis of the impacts associated with the proposed exchange. Much of the information in the Land Exchange document refers to analyses that have been refined in the Sheldon Transportation Plan.

In addition to analyzing potential impacts associated with the Sheldon Transportation Plan and proposed Land Exchange, Federal statute (16 U.S.C. 668dd-668ee) requires the Service to review a proposed use within a National Wildlife Refuge (like pipeline access roads) and determine that it is compatible with the purposes for which the refuge was established prior to being allowed on a refuge. A draft Compatibility Determination was prepared as part of the process for determining whether Ruby's proposed use of refuge roads is compatible.

The Service made the Sheldon Transportation Plan, the Land Exchange, and draft Compatibility Determination available for review and comment for a 15-day period consistent with Service NEPA and National Wildlife Refuge System Administration Act requirements. FWS provided to the FERC and the FERC published on their Project website an NOA of the supplemental land exchange information and the draft compatibility determination on June 18, 2010. A news release was also sent to national,

regional, and local media outlets. The public review and comment period closed on July 1, 2010.

The Service received written comment letters from two interested parties: one individual commenter and a cooperative of conservation groups consisting of the Toiyabe Chapter of the Sierra Club, Defenders of Wildlife, and Great Basin Resource Watch. The three advocacy groups submitted a joint letter under the Toiyabe Chapter of the Sierra Club letterhead. Following are the subject areas the comment letters raised and our response to those comments. The comments received did not address any topics which have not already been addressed in the NEPA planning process for the Ruby project. Responding to these comments did not require changes to the Ruby Pipeline Transportation Plan, Land Exchange, or Compatibility Determination.

Comments and Responses

Comment: Commentors questioned whether it is necessary for Ruby to use Sheldon Refuge roads.
Response: Ruby could access the pipeline along a limited number of other existing roads, broaden the construction footprint, or construct additional roads. These alternatives may increase environmental impact, increase safety risks, or increase costs over the conditioned use of existing improved roads on Sheldon Refuge.

Use of Sheldon roads will provide Ruby access to the pipeline ROW prior to grading the ROW, enabling civil surveys to stake the Project ROW, access routes along with pipeline centerline and outer ROW limits and allow the pipeline contractor to access parts of the ROW to better plan a construction schedule ahead of actual work on the ROW. These activities will help limit the construction ROW widths south of the Sheldon. A wider construction width would most likely be needed if access was not available for ingress and egress to the ROW, or possibly new roads would need to be developed. The access roads will allow stringing trucks to proceed in a one-way path in areas compared to two-way traffic up and down the ROW.

Use of Sheldon roads will also help to accelerate construction timing, and thus compressing the construction window. It should lessen the amount of winter construction, thereby limiting impacts to big game winter closure areas. Without access to Sheldon roads, the entire distance from MP 516 to MP 541 would need to be graded prior to any other construction activity. Normally, each crew activity completes approximately 1 mile per day with 2 to 3 days between them. The efficiency for this 25 miles without the access roads would be about 50% of normal or take twice as long as normal.

In addition to reducing environmental effects, using Sheldon roads would reduce a variety of safety risks. The terrain south of the Sheldon is rough enough to make access difficult along the Project ROW. Travelling down the ROW would cause delays, traffic congestion, and additional impacts to the ROW. Two-way traffic for stringing trucks would require tow tractors for some of the steep hills. Using Sheldon roads would allow

the truck traffic to plan more downhill travel with the empty trucks under safer conditions.

Comment: Commentors requested clarification regarding what was meant by incidental use of Rte 34a.
Response: Incidental use means use for emergency response or evacuation, a situation which may not occur.

Comment: Commentors asserted that other road use alternatives should have been considered.
Response: Ruby Pipeline originally proposed using twice the miles of road for access through Sheldon Refuge. Due to refuge concerns about impacts to wildlife and other trust resources, the Service has worked with Ruby to reduce the miles of refuge roads needed to access the pipeline construction corridor to absolute minimum in addition to requiring a variety of other conditions be met in order to minimize impacts. The original request entailed 94 miles of access roads, with a considerable portion being undeveloped two-track routes. The access roads were restricted to 54 miles, with less than 2 miles comprised of two-tracks, with the remainder roads already improved. As part of the process of identifying the absolute minimum miles of roads required for access, the Service and Ruby evaluated several alternative road use schemes resulting in the current proposal described in the Transportation Plan. As described in the Compatibility Determination, the combination of conditions for minimizing road use impacts and road use mitigation actions represents a modest overall benefit to refuge resources (e.g., weed treatment, native plant reseeding, road-bypass on sensitive wetland).

Comment: Commentors requested clarification regarding the extent of impacts from proposed road improvements, vegetation mowing, and creation of pullouts, especially with regard to invasive plants and soil erosion.

Response: The Transportation Plan analyzed the potential maximum number of pullouts, but the final number of pullouts to be constructed will likely be much fewer. A variety of practices described in the Transportation Plan will be used to minimize impact of road improvement include using matts in sensitive wet areas, mowing vegetation on roadsides rather than building pullouts, and in most areas restricting road use to existing road width (rather than blading a wider road footprint).

Treatment of weeds will be based on species and location, and may require multiple treatments. Furthermore, Ruby Pipeline is required to treat invasive species along roadside and reseed with native plant species, which should limit invasive spread and leave roadside in better condition. Ruby will use the least aggressive road improvement necessary to support road use, subject to approval by refuge staff.

Comment: Commentors expressed concerns on the adequacy of road rehabilitation plans asked for clarification regarding the timing for implementation, and questioned whether bonding is sufficient to cover road rehabilitation costs.

Response: The details of rehabilitation required for access roads on Sheldon Refuge is dependant upon specific improvement and impacts resulting from use. This is estimated for the Special Use Permit, but will be modified to fit the on-the-ground conditions, and implemented in 2011 with follow-up monitoring. Regarding the sufficiency of bonding, Ruby Pipeline has/will post approximately $41 million in financial guarantee for all federal land managers, which is estimated to be sufficient to cover rehabilitation and other costs.

Comment: Commentors questioned what actions the refuge would take if construction activity continued beyond December 31, 2010.
Response: Should Ruby request to use refuge roads beyond December 31, 2010, the Refuge would determine what activities would need to continue, analyze the consequences, determine if the proposed activities are compatible and determine if extension or modification to the Special Use Permit is warranted.

Comment: Commentors expressed a general concern that wildlife and vegetation surveys are not adequate to assess wildlife impacts or develop a Compatibility Determination. Commentors also expressed concern about impacts to wildlife during winter season, impacts to migratory birds during breeding season, and questioned the adequacy of avoidance measures for sage grouse and pygmy rabbits.
Response: It is important to note that baseline information has been developed and impacts to wildlife have been addressed for the entire Ruby Pipeline Project (final EIS, Jan 2010). Threatened & Endangered species have been addressed through the Endangered Species Act section 7 consultation process for the entire Pipeline. The migratory bird conservation plan prescribes avoidance, minimization and mitigation measures, which would be employed, where appropriate, on the entire Pipeline route and on Sheldon Refuge. Other sensitive species, such as sage grouse and pygmy rabbits, have also been addressed using best available science within the EIS, overall Project NEPA process, and species conservation plans.

As described in detail in the Transportation Plan, the best available, site specific information was used to identify routes and conditions of use which would avoid and minimize impacts to potentially affected wildlife species. The permit conditions will greatly reduce the potential biological impacts of Ruby's proposed use of Sheldon Refuge. Assuming FWS decided to retain some or all of the pullouts, a few acres of habitat will have been displaced. Ruby will restore – consistent with FWS specifications – any of the pullouts the Service chose not to retain. The increased volume, size, and noise of traffic will result in increased disturbance to Sheldon Refuge wildlife. This disturbance will occur on a temporary (approximately 6-month) and localized basis. Authorization of this use will require Ruby to undertake a variety of projects benefitting Sheldon Refuge's fish, wildlife, plants, and habitats including control of roadside invasive plants; repair and maintenance of the southern boundary fence and gates to minimize crossing by cattle, or feral/wild horses and burros; posting of the southern boundary; rerouting a road segment that currently crosses a spring-fed, perennial stream and runs adjacent to a research exclosure; and restoration of roadside habitats, including replanting natives in areas currently invaded by exotic plants.

Regarding impacts associated with the winter season – many species will have migrated out of the area, are hibernating, or have temporarily moved away from the road corridor, thus impacts to wildlife are expected to be relatively minor. By using existing improved roads, minimizing the number of roads, and limiting modification to the road footprint, potential impacts to movement of animals is also minimized.

Comment: Commentors requested clarification regarding Refuge authority for allowing Ruby to use roads on a national wildlife refuge.
Response: The Service, as administrator of National Wildlife Refuge System lands, is the agency with the jurisdiction to allow, deny, or otherwise regulate uses on National Wildlife Refuge System lands. The Service, under the authority of the National Wildlife Refuge System Administration Act, as amended, and other applicable regulations and policies, is proposing to allow Ruby pipeline to conduct certain activities on National Wildlife Refuge System lands under special conditions as specified in Special Use permit.

Comment: Commentors asserted that sufficient information had not been provided to understand the following series of questions.

a. Is the use consistent with applicable Executive Orders and Department and Service policies?
b. Is the use consistent with refuge goals and objectives in an approved refuge management plan?
c. Has an earlier documented analysis not denied the use?
d. Is the use consistent with public safety?
e. Is the use manageable within available budget and staff?
f. Is the use consistent with other resource or management objectives?
g. Will the use be easy to control in the future?
h. Is the refuge the only place where this activity can reasonably occur?
i. Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources?
j. Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?

Response: The series of questions listed by the commentor are part of the Service's Appropriate Use finding (603 FW 1). The Service has completed such a finding for this proposed use and a copy of this finding is provided in the attached ROD or is available upon request.

Comment: Commentors were concerned that impacts to cultural resources were not adequately addressed.
Response: Ruby conducted initial, on-the-ground cultural resource surveys for Refuge access roads and submitted reports as part of the FERC process for cultural resource clearance on the entire Ruby Pipeline Project. Cultural resource locations have not been disclosed in public documents in order to protect those resources from being adversely

affected. In addition, Ruby has prepared the Final Cultural Resources Treatment Plan for the Ruby Pipeline Project, Elko, Humboldt, and Washoe Counties, Nevada (Hildebrandt et al., May 2010). This Plan addresses unanticipated discovery of cultural resources associated with any Pipeline construction and maintenance activities. All cultural resource impact issues and plans have been addressed through consultation with affected State Historic Preservation Offices under section 106 of the National Historic Preservation Act.

Comment: Commentors asserted cumulative impacts of road use was inadequately analyzed.
Response: Cumulative impacts were analyzed in the overall project FEIS. FWS sought to minimize impacts on the refuge by keeping access corridors to a minimum, restricting improvement, and requiring Ruby to rehabilitate roads after use. It is important to note that the overall impacts have been minimized, and even with some benefit to the refuge resources because of the following actions:

a. Restricting use of access roads to the minimum number,
b. Limiting improvement and impact to the existing road footprint,
c. Controlling invasive plants, reseeding, native plant, and limiting erosion along allowed roads,
d. Requiring rehabilitation to roadside habitat after road use concludes,
e. Relocating a segment of one road from sensitive spring and springbrook habitat to lessen impact.
f. The refuge can close roads as needed to conduct priority management actions (e.g. feral horse gathers).

Construction of road changes and increased use of Sheldon Refuge roads will adversely affect biological resources over a 6-month period; however, in association with authorization of this use, Ruby will be required to undertake a variety of projects benefitting Sheldon Refuge's natural resources. In aggregate, these actions will generate positive benefits for habitats and biota near roads in the southwest and southern areas of Sheldon Refuge.

Ruby has proposed a number of changes to Sheldon Refuge's roads and routes, including laying down and compacting road base, blading, graveling, matting of a dry wash and spring, matting and bridging of culverts, and rerouting a section of road. These changes will enhance driver safety and improve access on these roads during times of the year when road conditions currently challenge travel. These changes will facilitate access to and management of Sheldon Refuge by FWS officials, FWS-authorized agents, and researchers and thereby directly and indirectly contribute to achievement of Sheldon Refuge's purposes, goal, objectives, and the Refuge System mission. Additionally, these road improvements will facilitate access to and use of Sheldon Refuge by visitors, including the highest priority general public users (i.e., hunters, anglers, wildlife observers, and photographers).

Ruby's proposed use of Sheldon Refuge roads, routes, and related actions is an economic use and; therefore, is the lowest priority for use of Sheldon Refuge. In light of the

stipulations to which they will be held, this use will have a mix of minor and modest effects. The adverse effects will not handicap Sheldon Refuge's ability to achieve its purposes and the beneficial effects will modestly facilitate achievement of those purposes. On net, in light of the foregoing, including several stipulations, the use proposal and stipulations will result in a set of actions that generated minor adverse effects and modest beneficial effects. On net, the proposed use will contribute to achievement of the Sheldon Refuge's purposes and the Refuge System mission.

Comment: Commentors questioned adequacy of wild fire prevention associated with Sheldon road use.
Response: In April 2010, Ruby issued an updated version of the Pipeline Project-wide Fire Suppression and Prevention Plan that was included in FERC's final EIS on this Project and, in a more specific plan, addressed fire risk in Washoe County in their Fire Prevention and Suppression and Medical Services Plan for Washoe County, NV (Ruby, May 2010). Wild fire prevention issues were addressed in detail in both of these documents and the overall project NEPA analysis.

Comment: Commentors expressed concern that purchase one inholding did not remedy threats from multiple inholdings across the refuge and questioned why the land exchange was not addressed in the compatibility determination.
Response: The property that Ruby has purchased as part of the land exchange was under imminent threat of development, includes key habitat in the center of the refuge, has a prominent position in the refuge view shed, and in an area frequently used by the public (Fish Spring Campground). As described in *Ruby Pipeline Project Land Exchange on Sheldon National Wildlife Refuge, Supplemental Information to the Ruby Pipeline Project Final Environmental Impact Statement* (USFWS, Jun 2010), there are both positive and negative impacts related to the land exchange, however, for the following reasons, the benefits that will be realized from the land exchange far outweigh any negative impacts.

- Acquisition of the Ruby inholding property will protect the habitat in a manner consistent with surrounding Sheldon Refuge lands. It will also aid the Service in achieving management objectives for species where habitat loss or degradation is a major cause of decline or where buffers are needed to protect sensitive areas.
- Acquisition of the inholding will improve Sheldon Refuge's ability to apply consistent management strategies with reduced fragmentation. Management of invasive species, fire suppression, habitat restoration, habitat connectivity, and protection of cultural and paleontological resources will be applied equally to the acquired property as it will to the existing (surrounding) Sheldon Refuge lands.
- Costs related to fencing around the private land, conducting land surveys, and maintaining access roads to the property will decrease because those measures will no longer be required nor implemented.
- The anticipated increase in traffic will be temporary and is not expected to result in a significant increase in the number of vehicle/animal collisions, accumulation of pollutants, or behavioral or physiological changes in animals sensitive to noise.
- The monetary appraised value of the Ruby exchange lands exceeds that of the FWS exchange lands; consequently, the land exchange is economically favorable to the public.

- The land exchange will allow Sheldon Refuge to absorb a 20-acre private inholding that is surrounded by Sheldon Refuge lands, restoring habitat connectivity and protection to this portion of the landscape. In contrast, parcels containing the 3.64-acre road easement, located at the southern boundary of Sheldon Refuge, are bordered on three sides by BLM lands that are not managed consistently with Sheldon Refuge strategies nor are the BLM lands afforded National Wildlife Refuge System protection.

The Service agrees it is desirable to acquire all refuge inholdings, but acquiring inholdings is dependent upon land owners being willing to sell their property to the refuge and availability of land acquisition funding. Regarding compatibility, since the land exchange is not considered a "refuge use", this action does not require a Compatibility Determination.

Comment: Commentors had numerous questions about actions that are not proposed as part of either the Transportation Plan or Land Exchange – e.g., identifying sources of gravel and water for road use, helicopter use, blasting.
Response: The above mentioned activities have not been proposed as part of the Transportation Plan, are not allowed on the refuge and are not subject to refuge regulation when occurring outside the refuge. These topics were addressed as part of the project EIS process.